

AUG 01 2011

Board of Vocational Nursing
and Psychiatric Technicians

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN 2009 3705

**FRANCISCO RIVERA RIVERA, JR.
21409 Weiser Avenue
Carson, CA 90745-1635
Vocational Nurse License No. VN 175742**

A C C U S A T I O N

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about January 26, 1996, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 175742 to Francisco Rivera Rivera, Jr. (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2012, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Bureau may renew an expired license at any time within four years after the expiration.

STATUTES

6. Section 2878 of the Code provides grounds for discipline by the Board:

"The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

• • •

(4) The use of excessive force upon or the mistreatment or abuse of any patient. For the purposes of this paragraph, 'excessive force' means force clearly in excess of that which would normally be applied in similar clinical circumstances.

• • •

(k) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee."

REGULATIONS

7. Title 16 Section 2518.6 of the California Code of Regulations sets forth performance standards for a licensed vocational nurse and deems violations of these standards unprofessional conduct subject to discipline:

“(a) A licensed vocational nurse shall safeguard patients'/clients' health and safety by actions that include but are not limited to the following:

(1) Reporting to the Board acts specified in Sections 2878 and 2878.5 of the Business and Professions Code;

(2) Documenting patient/client care in accordance with standards of the profession; and

1 (3) Performing services in accordance with Section 125.6 of the
Business and Professions Code.

2 (b) A licensed vocational nurse shall adhere to standards of the profession
3 and shall incorporate ethical and behavioral standards of professional practice which
include but are not limited to the following:

4 (1) Maintaining current knowledge and skills for safe and
5 competent practice;

6 (2) Maintaining patient/client confidentiality;

7 (3) Maintaining professional boundaries with the patient/client;

8 (4) Abstaining from chemical/substance abuse; and

9 (5) Cooperating with the Board during investigations as required
by Section 2878.1 of the Business and Professions Code.

10 (c) A violation of this section constitutes unprofessional conduct for
11 purposes of initiating disciplinary action.”

12 **COST RECOVERY**

13 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct - Excessive Force, Mistreatment or Abuse of Any Patient)**

19 9. Respondent is subject to disciplinary action under section 2878 subdivision (a)(4) of
20 the Code because he mistreated or abused an elderly patient in his care. The circumstances are as
21 follows:

22 a. On or about October 29 or October 30, 2009, Respondent mistreated and
23 abused Elaine T., an elderly and institutionalized patient in his care, by inappropriately touching
24 her vaginal area when he was supposed to be administering an insulin shot.¹

25 b. On prior occasions, Respondent mistreated and abused Elaine T. by kissing her
26 without her consent and by fondling one of her breasts.

27 _____
28 ¹ The victim's name is abbreviated for purposes of this accusation to protect her privacy.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Sexual Misconduct Related to Practice)**

3 10. Respondent is subject to disciplinary action under section 2878 subdivision (k) of the
4 Code for committing sexual battery on an institutionalized individual, an act that could be
5 punishable as a sexually related crime. The circumstances are as follows:

6 a. On or about October 29 or October 30, 2009, Respondent willfully and
7 unlawfully touched patient Elaine T.'s vaginal area, an intimate part, while she was
8 institutionalized for medical care and while she was seriously disabled. This touching was
9 against her will and was for the purpose of Respondent's sexual arousal, sexual gratification, or
10 sexual abuse. This conduct could be punishable as sexual battery under Penal Code section
11 243.4(b).

12 b. On a date unknown, Respondent touched patient Elaine T.'s breast, an intimate
13 part, while she was institutionalized for medical care and while she was seriously disabled. This
14 touching was against her will and was for the purpose of Respondent's sexual arousal, sexual
15 gratification, or sexual abuse. This conduct could be punishable as sexual battery under Penal
16 Code section 243.4(b).

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct - Failure to Safeguard Clients' Health & Safety)**

19 11. Respondent is subject to disciplinary action under section 2878 (a) of the Code for
20 unprofessional conduct for violating Title 16 Section 2518.6 subdivisions (a) and (c) of the
21 California Code or Regulations by failing to safeguard the safety and health of patient Elaine T.

22 12. Paragraph 9, including subparagraphs a and b are realleged and incorporated into this
23 cause of action.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct - Failure to Adhere to Ethical Standards of Practice)**

26 13. Respondent is subject to disciplinary action under section 2878 (a) of the Code for
27 unprofessional conduct for violating Title 16 Section 2518.6 subdivisions (b) and (c) of the
28

1 California Code of Regulations by failing to adhere to the ethical and behavioral standards of his
2 profession when he failed to maintain professional boundaries with patient Elaine T.

3 14. Paragraph 9, including subparagraphs a and b are realleged and incorporated into this
4 cause of action.

5 15. Respondent's actions towards Elaine T., including kissing her, fondling her breast,
6 and inappropriately touching her vaginal area, are all failures by Respondent to maintain
7 professional boundaries.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Generally)**

10 16. Respondent is subject to disciplinary action under section 2878 subdivision (a) of the
11 Code for unprofessional conduct for kissing patient Elaine T., fondling her breast, and
12 inappropriately touching her vaginal area.

13 17. Paragraph 9, including subparagraphs a and b are realleged and incorporated into this
14 cause of action.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
18 issue a decision:

19 1. Revoking or suspending Vocational Nurse License Number VN 175742, issued to
20 Francisco Rivera Rivera, Jr.;

21 2. Ordering Francisco Rivera Rivera to pay the Board of Vocational Nursing and
22 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
23 pursuant to Business and Professions Code section 125.3; and

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25 ///

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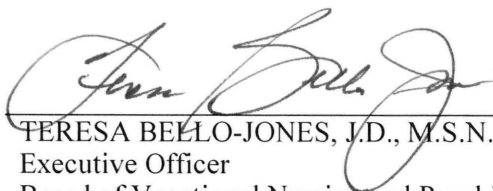
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3. Taking such other and further action as deemed necessary and proper.

DATED: August 1, 2011



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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